

Action	Deadline
Filing of Written Direct Cases Requests for Underlying Documents Related to Written Direct Cases.	April 1, 2002. April 10, 2002.
Responses to Requests for Underlying Documents.	April 17, 2002.
Completion of Document Production.	April 23, 2002.
Follow-up Requests for Underlying Documents.	April 29, 2002.
Responses to Follow-up Requests.	May 3, 2002.
Motions Related to Document Production.	May 8, 2002.
Production of Documents in Response to Follow-up Requests.	May 10, 2002.
All Other Motions, Petitions, and Objections.	May 15, 2002.

The precontroversy discovery period, as specified by § 251.45(b) of the rules, will begin on April 1, 2002, with the filing of written direct cases by each party. Each party in this proceeding who has filed a Notice of Intent to Participate *must* file a written direct case on the date prescribed above. Failure to submit a timely filed written direct case will result in dismissal of that party's claim. Parties must comply with the form and content of written direct cases as prescribed in 37 CFR 251.43. Each party to the proceeding must deliver a complete copy of its written direct case to each of the other parties to the proceeding, as well as file a complete copy with the Copyright Office by close of business on April 1, 2002, the first day of the 45-day period.

After the filing of the written direct cases, document production will proceed according to the above-described schedule. Each party may request underlying documents related to each of the other parties' written direct cases by April 10, 2002, and responses to those requests are due by April 17, 2002. Documents which are produced as a result of the requests must be exchanged by April 23, 2002. It is important to note that all initial document requests must be made by the April 10, 2002 deadline. Thus, for example, if one party asserts facts that expressly rely on the results of a particular study that was not included in the written direct case, another party desiring production of that study must make its request by April 10, 2002; otherwise, the requesting party is not entitled to production of the study.

The precontroversy discovery schedule also establishes deadlines for follow-up discovery requests. Follow-up requests are due by April 29, 2001, and responses to those requests are due by May 3, 2001. Any documentation

produced as a result of a follow-up request must be exchanged by May 10, 2002. An example of a follow-up request would be as follows. In the above example, one party expressly relies on the results of a particular study which is not included in its written direct case. As noted above, a party desiring production of that study or survey must make its request by April 10, 2002. If, after receiving a copy of the study, the reviewing party determines that the study heavily relies on the results of a statistical survey, it would be appropriate for that party to make a follow-up request for production of the statistical survey by the April 29, 2002, deadline. Again, failure to make a timely follow-up request would waive the requesting party's right to request production of the survey.

In addition to the deadlines for document requests and production, there are two deadlines for the filing of precontroversy motions. Motions related to document production must be filed by May 8, 2002. Typically, these motions are motions to compel production of requested documents for failure to produce them, but they may also be motions for protective orders. Finally, all other motions, petitions and objections must be filed by May 15, 2002, the final day of the 45-day precontroversy discovery period. These motions, petitions, and objections include, for example, petitions to dispense with formal hearings under § 251.41(b).

Due to the time limitations between the procedural steps of the precontroversy discovery schedule, we are requiring that all discovery requests and responses to such requests be served by hand or fax on the party to whom such response or request is directed. Filing of requests and responses with the Copyright Office is neither required nor encouraged.

Filing and service of all precontroversy motions, petitions, objections, oppositions, and replies shall be as follows. In order to be considered properly filed with the Librarian and/or Copyright Office, all pleadings must be delivered to the Copyright Office no later than 5 p.m. of the filing deadline date. Parties may deliver the pleadings to: Office of the Register of Copyrights, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20540; or alternatively, parties may send their pleadings by Federal Express to: Copyright Arbitration Royalty Panel (CARP), CARP Specialist, (Tel. 202-707-8380), Federal Express, 208 Second Street, SE., Washington, DC 20003, provided that

the filing reaches the Copyright Office by the deadline. The Office cautions parties to use only the Federal Express address listed in this Order, to include the telephone number of the Office, and to direct the package to the attention of the CARP Specialist. The Federal Express office will notify the Copyright Office upon receipt of a properly addressed package and the Copyright Office will make arrangements to pick up the package the same day. Under no circumstances will the Office make arrangements to retrieve a package from any other Federal Express location or track a misdirected package. Each party bears the responsibility for insuring that the filings are in the Copyright Office by the deadline.

The form and content of all motions, petitions, objections, oppositions, and replies filed with the Office must be in compliance with §§ 251.44(b)-(e). As provided in § 251.45(b), oppositions to any motions or petitions must be filed with the Office no later than seven business days from the date of filing of such motion or petition. Replies are due five business days from the date of filing of such oppositions. Service of all motions, petitions, objections, oppositions, and replies must be made on counsel or the parties by means no slower than overnight express mail on the same day the pleading is filed.

C. Initiation of Arbitration

The 180-day arbitration period will be initiated on July 15, 2002. The schedule of the arbitration proceeding will be established by the CARP after the three arbitrators have been selected.

Dated: November 15, 2001.

David O. Carson,
General Counsel.

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2001-2 CARP DTNSRA and Docket No. 2001-1 CARP DSTR A 2]

Digital Performance Right in Sound Recordings Rate Adjustment Proceedings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry and request for notices of intention to participate.

SUMMARY: The Copyright Office of the Library of Congress is requesting comments as to whether the rate adjustment proceeding to determine reasonable rates and terms for the public

performance of sound recordings by new subscription services should be consolidated with the rate adjustment proceeding to determine reasonable rates and terms for the public performance of sound recordings by pre-existing satellite digital audio radio services and pre-existing subscription services. The Office is also calling for submission of Notices of Intent to Participate from parties interested in participating in either or both proceedings.

DATES: Comments and Notices of Intent to Participate are due no later than December 20, 2001. Reply comments are due no later than January 22, 2002.

ADDRESSES: An original and five copies of comments, reply comments and Notices of Intent to Participate, if sent by mail, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, they should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM-403, First and Independence Avenues, SE., Washington, DC 20559-6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax (202) 252-3423.

SUPPLEMENTARY INFORMATION:

Background

In 1995, Congress passed the Digital Performance Right in Sound Recordings Act, Public Law 104-39, which gave copyright owners of sound recordings an exclusive right to perform publicly their copyrighted works by means of a digital audio transmission, subject to certain limitations and exemptions. 17 U.S.C. 106(6). Among the limitations placed on the performance of a sound recording was the creation of a statutory license for performances made by nonexempt, non-interactive digital subscription services. 17 U.S.C. 114. Initial rates and terms for transmissions made by these services were determined by the Librarian of Congress after a proceeding before a Copyright Arbitration Royalty Panel ("CARP") under chapter 8 of the Copyright Act. 63 FR 25394 (May 8, 1998).

Section 114 was amended with the passage of the Digital Millennium Copyright Act of 1998 ("DMCA"), Public Law 105-304, to create statutory licenses to cover additional digital audio transmissions. These include "eligible nonsubscription

transmissions" and those transmissions made by "new subscription services" and "pre-existing satellite digital audio radio services."

On January 9, 2001, the Copyright Office published a **Federal Register** notice initiating a voluntary six-month negotiation period to establish terms and rates for the statutory licenses covering "pre-existing satellite digital audio radio services," and "pre-existing subscription services" (the three subscription services in existence prior to the passage of the DMCA). 66 FR 1700 (January 9, 2001). No agreements were reached. After the close of the negotiation period, the Office received petitions from the Recording Industry Association of America ("RIAA"), and jointly XM Satellite Radio, Inc. and Sirius Satellite Radio, Inc., requesting that the Librarian of Congress convene a CARP to establish terms and rates for the statutory license for pre-existing satellite digital audio radio services. Convocation of these proceedings is pending.

On February 12, 2001, the Copyright Office published a **Federal Register** notice initiating a voluntary six-month negotiation period to establish rates and terms for the statutory license covering new subscription services. 66 FR 9881 (February 12, 2001). No agreements were reached. After the close of the negotiation period, the Office received petitions from Music Choice and RIAA requesting that the Librarian of Congress convene a CARP to establish terms and rates for the statutory license covering new subscription services.

Request for Comments

In its petition to convene a CARP for new subscription services, Music Choice requests the Copyright Office to consolidate the proceeding for new subscription services (Docket No. 2001-2 CARP DTNSRA) with the proceeding for pre-existing satellite digital audio radio services and pre-existing subscription services (Docket No. 2001-1 CARP DSTRA2). Music Choice submits that "[g]ood cause exists to consolidate the two proceedings in the interest of fairness and efficiency." Music Choice petition at 1.

The Library seeks comment as to the advisability of consolidating Docket No. 2001-2 CARP DTNSRA with Docket No. 2001-1 CARP DSTRA2. Can both dockets be handled efficiently and effectively by a single CARP? What are the advantages, if any, of convening separate CARPs for these two dockets?

Request for Notices of Intent To Participate

Section 251.45(a) of the rules, 37 CFR, requires that a Notice of Intention to participate in a CARP proceeding, but it does not prescribe the contents of the Notice. Recently, in another proceeding, the Library has been forced to address the issue of what constitutes a sufficient Notice and to whom it is applicable. See 65 FR 54077 (September 6, 2000); see also Orders in Docket No. 2000-2 CARP CD 93-97 (June 22, 2000, and August 1, 2000). These rulings will result in a future amendment to § 251.45(a) to specify the content of a properly filed Notice. In the meantime, the Office advises those parties filing Notices of Intention to Participate in this proceeding to comply with the following instructions.

Each party wishing to participate in Docket No. 2001-2 CARP DTNSRA, Docket No. 2001-1 CARP DSTRA, or both must file a Notice of Intention to Participate that contains the following: (1) The party's full name, address, telephone number, and facsimile number (if any); (2) identification of whether the Notice covers Docket No. 2001-2 DTNSRA, Docket No. 2001-1 CARP DSTRA, or both; and (3) a statement of the party's intention to fully participate in a CARP proceeding.

Claimants may, in lieu of individual Notices of Intention to Participate, submit joint Notices. In lieu of the requirement that the Notice contain the party's name, address, telephone number and facsimile number, a joint Notice shall provide the full name, address, telephone number, and facsimile number (if any) of the person filing the Notice and it shall contain a list identifying all parties to the joint Notice. In addition, if the joint Notice is filed by counsel or a representative of one or more of the parties identified in the joint Notice, the joint Notice shall contain a statement from such counsel or representative certifying that, as of the date of submission of the joint Notice, such counsel or representative has the authority and consent of the parties to represent them in the CARP proceeding.

Notices of Intention to Participate are due no later than December 20, 2001. Failure to file a timely Notice of Intention to Participate may preclude a party from participating in a CARP proceeding.

Dated: November 13, 2001.

David O. Carson,
General Counsel.

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